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Corporation

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:  
NP WILDCAT TIC 1, LLC,  
  
Debtor.

Case No. 23-12657-SC

Chapter 11

**FEDERAL HOME LOAN  
MORTGAGE CORPORATION'S  
RESPONSE TO MOTION BY  
UNITED STATES TRUSTEE TO  
DISMISS CASE OR CONVERT CASE  
TO ONE UNDER CHAPTER 7  
PURSUANT TO 11 U.S.C. § 1112(b)**

Date: January 31, 2024  
Time: 1:30 p.m.  
Ctrm.: 5C / Virtual  
Address: 411 West Fourth Street  
Santa Ana, CA 92701

Federal Home Loan Mortgage Corporation (“Freddie Mac”), secured creditor of the above-captioned debtor NP Wildcat TIC 1, LLC (“Debtor”), hereby submits this response (“Response”) to the Motion by the United States Trustee to Dismiss Case or Convert Case to One under Chapter 7 Pursuant to 11 U.S.C. § 1112(b) [Dkt. No. 24] (“Motion”).

**I. IF “CAUSE” UNDER 11 U.S.C. § 1112(b) IS FOUND, THE CASE SHOULD BE  
DISMISSED**

The Motion seeks a finding that “cause” exists under section 1112(b) of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and an order dismissing or converting

1 the above-captioned case (“Case”) to one under chapter 7. Freddie Mac submits that, if “cause” is  
2 found under section 1112(b), that this Case should be dismissed rather than converted or  
3 administered by a trustee.

4 Once cause is established, the court must choose between dismissal or conversion,  
5 “whichever is in the best interest of creditors and the estate.” *See In re Staff Inv. Co.*, 146 B.R. 256,  
6 260 (Bankr. E.D. Cal. 1993). This standard “implies a balancing test to be applied through case-  
7 by-case analysis.” *Id.*

8 Since November 6, 2023, a court-appointed receiver has been in possession and control of  
9 the Debtor’s business and real estate located at 1050 East 8th Street, Tucson, Arizona 85719 (the  
10 “Property”), which is an improved property near the University of Arizona being operated as a  
11 student apartment complex called the Wildcat Canyon Village Apartments.<sup>1</sup> The receiver has taken  
12 significant steps to stabilize the Debtor’s business, including completing a backlog of work orders  
13 and restoring hot water and heating to the Property, which will help ensure continued occupancy  
14 of the Property and enhance its value. Prior to the filing of the Case, Freddie Mac noticed a trustee’s  
15 sale of the Property, which has been stayed as a result of the filing of the Case. The trustee’s sale  
16 has been continued to January 24, 2024, and will be continued again if the automatic stay remains  
17 in place.

18 The Case should be dismissed rather than converted so that the Property can be sold at the  
19 greatest possible value while keeping costs low. If the Case is dismissed, it will allow the receiver  
20 to continue to maintain the Property until it is sold either at Freddie Mac’s nonjudicial foreclosure  
21 sale or another sale. Conversion of the Case will only impose additional and unnecessary  
22 administrative costs on the Debtor’s creditors and delay the seemingly inevitable sale of the  
23 Property due to “the significant administrative fees and costs associated with a conversion to  
24 chapter 7.” *In re Mense*, 509 B.R. 269, 285 (C.D. Cal. 2014) (finding dismissal in the best interest  
25 of the creditors and the estate). Likewise, the appointment of a trustee or examiner (and likely  
26 counsel and/or other professionals for the same) will add no or very little value to creditors, but  
27

28 <sup>1</sup> Freddie Mac and the Debtor are in the final stages of negotiating a stipulation excusing the receiver from turning  
over the receivership estate to the Debtor so that the receiver can continue to maintain the Property.

1 instead will generate possibly hefty administrative costs. Since a receiver is already in possession  
2 and control of the Debtor's business and Property, conversion or the appointment of a trustee or  
3 examiner will serve little purpose and will only interfere with the efficient and effective liquidation  
4 of the Property.

5 **II. CONCLUSION**

6 For all of the foregoing reasons, if "cause" under section 1112(b) is found, the Case should  
7 be dismissed.

8  
9 Dated: January 17, 2024

SNELL & WILMER L.L.P.

10  
11 By: /s/ Marshall J. Hogan

12 Marshall J. Hogan  
13 Jill H. Perrella

14 Attorneys for Federal Home Loan Mortgage  
15 Corporation  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

600 Anton Blvd., Suite 1400, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled (*specify*): **FEDERAL HOME LOAN MORTGAGE CORPORATION'S RESPONSE TO MOTION BY UNITED STATES TRUSTEE TO DISMISS CASE OR CONVERT CASE TO ONE UNDER CHAPTER 7 PURSUANT TO 11 U.S.C. § 1112(b)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **1/17/2024**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Matthew Bouslog, mbouslog@allenmatkins.com, ncampos@allenmatkins.com; Michael J Hauser michael.hauser@usdoj.gov; Marshall J Hogan, mhogan@swlaw.com, fcardenas@swlaw.com; Matthew I Kaplan matthew.kaplan@tuckerellis.com, sofia.escalante@tuckerellis.com; Thomas.Fawkes@tuckerellis.com; Christine.Cassidy@tuckerellis.com; United States Trustee (SA), ustregion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **1/17/2024**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor: NP Wildcat TIC 1, LLC, 180 Avenida La Pata, San Clemente, CA 92673

United States Trustee: United States Trustee (SA), 411 W Fourth St., Suite 7160, Santa Ana, CA 92701-4593

Chamber's Copy: U.S. Bankruptcy Court, Ronald Reagan Federal Building, 411 West Fourth Street, Suite 5130, Santa Ana, CA 92701-4593

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/17/2024  
Date

Kevin Roger  
Printed Name

/s/Kevin Roger  
Signature